

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY
Caption in compliance with D.N.J. LBR 9004-1(b)

NORRIS McLAUGHLIN, P.A.

Morris S. Bauer
Melissa A. Pena
400 Crossing Boulevard, 8th Floor
P.O. Box 5933
Bridgewater, New Jersey 08807
(908) 722-0700
msbauer@norris-law.com
mapena@norris-law.com

Counsel for the Debtors/Debtors-in-Possession

In re:

IMMUNE PHARMACEUTICALS INC, *et al.*,
Debtors.¹

Chapter 11

Case No. 19-13273 (VFP)

Hon. Vincent F. Papalia

**DECLARATION GARY H. RABIN IN SUPPORT OF COMMITTEE'S MOTION TO
CONFIRM THE AUTOMATIC STAY APPLIES TO ASSETS OF THE DEBTORS
WHEREVER LOCATED AND RELATED RELIEF**

Gary H. Rabin, of full age, being duly sworn according to law, upon his oath, deposes and states:

1. I am the President and Interim Chief Executive Officer of the debtor, Immune Pharmaceuticals Inc. (the "Immune Debtor"). The Immune Debtor owns all of the stock in the following debtor entities: Immune Pharmaceuticals, Ltd. ("Ltd."), Cytovia, Inc. ("Cytovia"), Maxim Pharmaceuticals, Inc. ("Maxim"), Immune Pharmaceuticals USA Corp. ("Immune USA" and collectively referred to with Ltd., Cytovia and Maxim as the "Subsidiaries" and together with the Immune Debtor as the "Debtors"). As such, I have knowledge of the facts set forth herein

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtor's taxpayer identification number are as follows: Immune Pharmaceuticals, Inc. (1431); Immune Pharmaceuticals, Ltd.; Cytovia, Inc. (7805); Immune Oncology Pharmaceuticals, Inc.; Maxim Pharmaceuticals, Inc. (9983); and Immune Pharmaceuticals USA Corp. (9630).

based on my personal knowledge and/or my review of the Debtors' books and records, which are maintained in the ordinary course of their businesses.

2. I submit this Declaration in support of Official Committee of Unsecured Creditors' Motion to Confirm the Automatic Stay and Related Relief (Doc. No. 242).

3. As this Court is aware, on July 16, 2019, I participated (by Court Call) in the hearing (the "Bidding Procedures Hearing") on the Debtors' Motion for entry of an Order, pursuant to sections 105(a), 363(b), (f) and (m) of the United States Bankruptcy Code, Federal Rules of Bankruptcy Procedure 2002 and 6004, and D.N.J. LBR 6004, approving and authorizing, among other things: (i) bid procedures and form of notice in connection with the sale of the Debtors' anti-
etoxatin antibodies, including bertilimumab assets free and clear of all liens, claims, encumbrances, and interests, (ii) stalking horse agreement and bid protections, (iii) the scheduling of a sale hearing, (iv) the sale to the purchaser submitting the highest or best offer, (v) procedures for assuming and assigning executory contracts, and (vi) other related relief (the "Sale Motion"), and in particular, the Debtors' request for the entry of an Order approving the bidding procedures.

4. Prior to the Bidding Procedures Hearing, I submitted declarations in support of the entry of the Bidding Procedures Order and in response to the Objection to the Motion filed by Baruch Hakim (the "Israeli Trustee") in his capacity as the trustee of Ltd.

5. On July 16, 2019, the Court entered an order approving the bidding procedures (the "Bidding Procedures Order").

6. In or about 2013, prior to the formation of the Immune Debtor, a data and records site (the "Dropbox") was set up for the maintenance of all business records and detailed information and studies relating to all of the drug lines and documents owned by the Debtors or

their predecessor, including the Anti-Eotaxin Assets,² Ceplene, Nanocyclo, Amiket and all other development programs. The Dropbox was established in Israel.

7. Subsequent to the formation of the Immune Debtor, the Debtors maintained and controlled the Dropbox with one Ltd. employee (Galit Yadid, now a former employee) and a series of other employees, being assigned ownership rights. On behalf of the Immune Debtor, Tony Fiorino was assigned the co-owner rights to the Dropbox some time after he became employed by the Immune Debtor as the chief medical officer and continued with such rights until in or about March 2019.

8. Subsequent to my becoming the Interim CEO and President of the Immune Debtor, I took over the co-owner rights of the Dropbox from Mr. Fiorino. As the co-owner, I had the right to allow persons to access the Dropbox, and add and remove information and maintain the Dropbox.

9. Over a year prior to the Petition Date, when the Debtors commenced the solicitation process for all of their various products, the Debtors set up separate folders or “data rooms” within the Dropbox for each of the product lines. The data rooms were set up to provide due diligence information to prospective purchasers.

10. The Debtors had prospective purchasers execute non-disclosure agreements (“NDAs”) and then provided the prospective purchasers with access to the data room for the particular product or products of interest. A prospective purchaser with access to the Dropbox is referred by Dropbox as a “collaborator”.

11. Approximately 25 NDAs were signed with the Debtors giving over 150 persons access to the data rooms to perform due diligence.

² Anti-Eotaxin Assets shall have the meaning set forth in the Sale Motion.

12. Subsequent to the commencement of the Israeli Stay Proceeding, as set forth above, Galit Yadid's employment was terminated by the Israeli Trustee. At some point, Ms. Yadid provided the Israeli Trustee with her login and password information so he succeeded to the rights held by Ltd. I was aware that this occurred. Under the belief that the Israeli Trustee was working with the Debtors with a common goal of maximizing the value of the Anti-Eotaxin Assets and monetizing same, I did not have any concerns with the Israeli Trustee obtaining co-owner rights to the Dropbox.

13. The Israeli Trustee informed me that he had prospective purchasers interested in the Anti-Eotaxin Assets as well as other assets and he needed to be in a position to provide prospective purchasers with access to certain data rooms subject to their execution of an NDA

14. On June 18, 2019, Mr. Hakim and I agreed that the Dropbox needed to be cleaned up by removing some extraneous files and deleting editors who are no longer employed by the Debtors. I agreed to assist in this process.

15. Dropbox's technical support advised that it would take several hours to clean up the Dropbox. All access was rendered unavailable to complete such tasks the afternoon of Friday, June 21, 2019 and Friday, June 28, 2019. As of June 29, 2019, all clean-up work was complete with no further changes being necessary and no other user issues remaining.

16. On the morning of July 17, 2019, less than 24 hours, after the entry of the Bidding Procedures Order, two of the major and highly interested prospective purchasers contacted me and advised me that they could not access the Anti-Eotaxin Assets' data room.

17. I immediately attempted to access the data room and found my rights were also removed, including my co-owner rights. I contacted counsel, who sent an email to the Israeli Trustee's U.S. counsel to demand access. The Israeli Trustee's U.S. counsel provided a responding

email where he claimed that this was a “mistake” and access would be restored the following morning. The Debtors’ counsel stressed that access needed to be provided immediately because even after the Israeli Trustee restored my rights, I would need to add more than 100 email addresses of collaborators. Copies of the email exchange between counsel for the Debtors and Israeli Trustee is attached hereto as Exhibit “A”.

18. The Debtors’ counsel advised the Court and requested a Court conference to discuss the issue. In part, this request was made because the Debtors did not immediately receive confirmation from the Israeli Trustee to restore my rights.

19. Subsequent to the Court scheduling a conference for 3:30 the afternoon of July 17, 2019, the Israeli Trustee restored my rights and the Court conference was cancelled.

20. When my rights were restored, I accessed the data rooms to make sure all files existed. To date, I have not yet been able to completely confirm that all files are present. I am able to confirm that all files related to the Anti-Eotaxin Assets are present. I reviewed the circumstances under which the right to access of the prospective purchasers was deleted. I accessed the Dropbox history log to determine whose access was removed and when.

21. I found that starting at approximately 11:14 am EST on July 16, 2019 (approximately 45 minutes before the Bidding Procedures Hearing started), Mr. Hakim removed my rights and then proceeded for the next 30 minutes to remove one by one the rights of the prospective purchasers. Approximately 150 names were removed. Annexed hereto as Exhibit B³ is a true and accurate copy of a print out log reflecting Mr. Hakim deleting users on the morning of the Bidding Procedures Hearing. The log reflects action of “removed collaborator”. This means Mr. Hakim deleted a user. In the column stating “affected”, the log identifies the user “affected”

³ The time column reflects 10:14 am. Upon information and belief, this is Central Standard Time.

by email addresses. The email addresses have been redacted as they identify prospective purchasers and their email addresses.¹ An unredacted version is being made available to the Court for in camera review.

22. On July 18, 2019, I spent over 4 hours restoring the names and emailing the prospective purchasers to advise them that they should respond to an invite to regain access to the data room.

23. On July 18, 2019, despite the Israeli Trustee's representation that my rights had been completely restored, I found that this is not the case. I do not have access to the Cytovia data room, which contains information relating to Ceplene.

24. To prevent this from happening again, I believe that I should be the sole owner of the Dropbox and assuming Mr. Hakim remains as the Israeli Trustee that he is instructed to make all requests through me. This will prevent Mr. Hakim from again affecting the sale process. The Israeli Trustee would therefore retain access to the data, but will be unable to remove users from the data room.

Pursuant to 28 U.S.C. § 1746, I hereby declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.


Gary H. Rabin
Interim CEO

Dated: July 19, 2019

¹ The Debtors will proceed with an application to approve the document being filed in a redacted manner

EXHIBIT A

Mo Bauer

From: Melissa A. Peña, Esq. <mapena@norris-law.com>
Sent: Wednesday, July 17, 2019 12:48 PM
To: Timothy T. Brock; Mo Bauer; John I. Coster
Cc: 'Nir Kehat'; 'ניר פרומין, ע'; 'jsmairo@pbnlaw.com'; 'Kelly Curtin (kdcurtin@pbnlaw.com)'; 'Gary H. Rabin (gary@vineholdingsgroup.com)'
Subject: RE: Immune Data Room Information Issue!
Attachments: Screen Shot 2019-07-17 at 8.36.46 AM.png

Importance: High

Tim:

I have discussed your email with my client and the factual circumstances regarding the data room.

Mr. Hakim and Mr. Rabin were "co-owners" in the data room. Over the last few days, the two folders, "Bertlimumab Data Room 2018" and "anti-eotaxin manufacturing", have been taken over by Mr. Hakim as "sole" owner from Mr. Rabin and all users with access to the folder were denied access. This includes Mr. Rabin, Armory personnel and approximately 100 employees of potential purchasers have been specifically deleted. My client cannot believe that they were "mistakenly removed" as all 100 users had to be manually deleted. See the attached screen shot.

On July 2nd, all that was discussed with Mr. Hakim and Mr. Rabin is an agreement to make sure that both gentleman were aware of any new companies who signed NDAs and were in the data room. This was in the spirit of cooperation before your client elected to proceed with the Fidelity offer.

Again, correcting this issue cannot wait. The 100 users need access ASAP as the two folders are the only significant information for them to conduct due diligence. My client has advised me that all Mr. Hakim has to do to fix the issue is to add Mr. Rabin as an owner to the two above-referenced folders. He can do this remotely from his computer or have you sign in on his behalf and get it done. This is the fix for today. We obviously reserve all rights with respect to how the data room is being administered on a going forward basis. Again, bidders are asking Mr. Rabin for access. Even after your client takes the few seconds to add Mr. Rabin, Mr. Rabin will have to manually add the 100 users.

I left you a voicemail. Please call me.

Melissa A. Peña, Esq.

t: 917.369.8847 | f: 212.808.0844 | e: mapena@norris-law.com | www.norismclaughlin.com
NJ Office: 400 Crossing Blvd | 8th Floor | P.O. Box 5933 | Bridgewater, NJ 08807-5933
NY Office: 875 Third Ave | 8th Floor | New York, NY 10022
Bridgewater, NJ | New York, NY | Allentown, PA



From: Timothy T. Brock <tbrock@ssbb.com>
Sent: Wednesday, July 17, 2019 11:08 AM
To: Mo Bauer <msbauer@norris-law.com>; John I. Coster <john.coster@ssbb.com>
Cc: 'Nir Kehat' <nir@tadmor-levy.com>; 'שיר פרומין, עוז' <shir@fmn-law.co.il>; 'jsmairo@pbnlaw.com' <jsmairo@pbnlaw.com>; 'Kelly Curtin (kdcurtin@pbnlaw.com)' <kdcurtin@pbnlaw.com>; Melissa A. Peña, Esq. <mapena@norris-law.com>; 'Gary H. Rabin (gary@vineholdingsgroup.com)' <gary@vineholdingsgroup.com>
Subject: RE: Immune Data Room Information Issue!

Mo,

I see that Shir Froumin is copied on these emails. I understand from my client that the facts of this data room issue were already explained thoroughly with him and that names are to be restored by tomorrow morning. My client assured me that he did nothing to remove names or curtail access; he assured me that Gary Rabin conferred with him last week and an agreement was reached to more carefully protect the data and ensure that only persons who had entered NDAs (a U.S. one for Inc. and an Israeli one) would be permitted entry. My client does not know exactly why, through this exercise to upgrade data protection, that Armory representatives were denied access; that would have been a mistake. But it is one that can be, and will be, readily corrected as soon as the relevant email addresses of the Armory personnel are forwarded to my client. He is awaiting that information. And I am advised that this state of affairs all has been explained to Mr. Shir Froumin earlier today.

Can you confirm the above?

Regards,

Tim

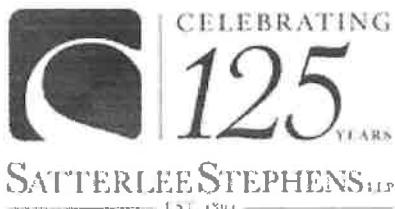
Timothy T. Brock | Satterlee Stephens LLP
230 Park Avenue, New York, NY 10169
212.404.8781 (direct) | 212.818.9200 (main) | 212.818.9606 (fax) | (914) 980-0514 (Mobile)
tbrock@ssbb.com | www.ssbb.com



From: Timothy T. Brock
Sent: Wednesday, July 17, 2019 9:45 AM
To: 'Mo Bauer'; John I. Coster
Cc: Nir Kehat; 'שיר פרומין, עוז' <shir@fmn-law.co.il>; Kelly Curtin (kdcurtin@pbnlaw.com); Melissa A. Peña, Esq.; Gary

Mo,
I just saw this message a few minutes ago. I know nothing whatsoever about this issue. I have reached out to my client and I will attempt to promptly report back to you.
Regards,
Tim

Timothy T. Brock | Satterlee Stephens LLP
230 Park Avenue, New York, NY 10169
212.404.8781 (direct) | 212.818.9200 (main) | 212.818.9606 (fax) | (914) 980-0514 (Mobile)
tbrock@ssbb.com | www.ssbb.com



From: Mo Bauer [<mailto:msbauer@norris-law.com>]
Sent: Wednesday, July 17, 2019 8:13 AM
To: Timothy T. Brock; John I. Coster
Cc: Nir Kehat; ניר פרומין; jsmairo@pbnlaw.com; Kelly Curtin (kdcurtin@pbnlaw.com); Melissa A. Peña, Esq.; Gary H. Rabin (gary@vineholdingsgroup.com)
Subject: Immune Data Room Information Issue!
Importance: High

This morning, we received a call from our client advising us that the Israeli Trustee has unilaterally removed all significant data regarding the anti-eotaxin assets from the data room.

Our client's investment banker, Armory (who is speaking to prospective purchasers on a daily basis) including the large pharmaceutical companies who have been reviewing the assets in contemplation of submitting competing bids no longer have access to the information. This is obviously unacceptable.

When we discussed revisions to the bidding procedures order yesterday, you advised that you were suggesting changes to encourage competitive bidding. Your client's conduct speaks otherwise.

We hereby demand that your client restore the information immediately.

If we do not receive confirmation by 11 am this morning, we will move forward with scheduling an emergency call before Judge Papalia. We will contact the court immediately to advise of the issue and the possible need for a call today.

Mo Bauer
t: 908.252.4345 | f: 908.722.0755 | e: msbauer@norris-law.com | www.norismclaughlin.com
NJ Office: 400 Crossing Blvd | 8th Floor | P.O. Box 5933 | Bridgewater, NJ 08807-5933
Bridgewater, NJ | New York, NY | Allentown, PA



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Live Chat Support

box **Mike**
Customer Support

MIKE
I am seeing a folder named Bertillumab 2018 Data Room folder under tony.fiorino@immuneapharma.com root folder

Box User
ok.. how do i access it

box **Mike**
is this the missinf folder?

Box User
yes

box **Mike**
This folder was deleted. I can restore this folder as long as I have your consent

Box User
please do. as well as another one called anti-eotaxin manufacturing or similar name.

Box User
when was it deleted?

box **Mike**
anti-eotaxin manufacturing was not deleted

box The reason why you cannot access the folder it's because these wasn't shared to you by baruch@hakimlaw.co.il

Box User
Ok. I'm the CEO

1 new message 

Box User
It's not his decision.

EXHIBIT B

